



TENNESSEE DEPARTMENT OF CORRECTION

Comptroller's Investigative Report January 31, 2017

Justin P. Wilson, Comptroller





**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
DIVISION OF INVESTIGATION**

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Comptroller of the Treasury**

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January 31, 2017

Tony Parker, Commissioner
Tennessee Department of Correction
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Nashville, Tennessee 37243

Commissioner Parker:

The Office of the Comptroller of the Treasury conducted an investigation of selected records of the Tennessee Department of Correction (TDOC) and the Tennessee Correction Academy (the academy) for fiscal years 2016 and 2015. We expanded the scope of the investigation as necessary. Our investigation revealed the following deficiencies:

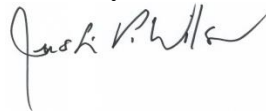
- TDOC did not comply with its hiring standards for a correctional officer who did not meet the vision requirements.
- The academy is not in compliance with its training standards.
- Personnel and training records for trainees who attended the academy were housed in multiple locations and did not contain complete information.
- Evidence of instructor certification was not available for some instructors at the academy.
- The academy's current policy for firearms qualification allows unlimited retesting.
- TDOC does not maintain adequate controls over the issuance of firearm certification cards.

Tony Parker, Commissioner
Tennessee Department of Correction
January 31, 2017

The findings and recommendations, as a result of our investigation, are presented in this report. These findings and recommendations have been reviewed with management to provide an opportunity for their response. Also, these findings and recommendations have been reviewed with the district attorney general for the Twentieth Judicial District.

Copies of this report are being forwarded to Governor Bill Haslam, the State Attorney General, the District Attorney General, certain state legislators, and various other interested parties. A copy is available for public inspection in our office and may be viewed at <http://www.comptroller.tn.gov/ia/>.

Sincerely,

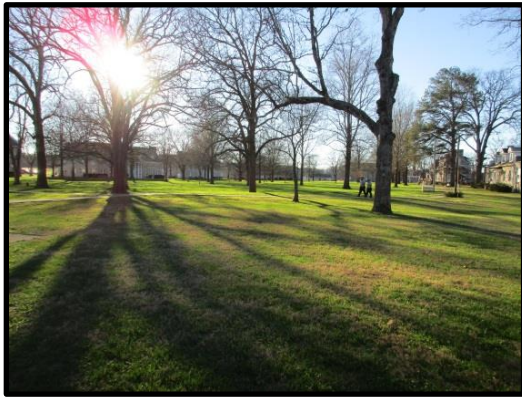
A handwritten signature in black ink, appearing to read "Jack R. White", written over a light gray rectangular background.

Comptroller of the Treasury

JPW/RAD

TENNESSEE DEPARTMENT OF CORRECTION

BACKGROUND



The Tennessee Correction Academy (the academy), located in Tullahoma, Tennessee, serves as the state's primary training and staff development center for the Tennessee Department of Correction (TDOC) and provides training in the areas of adult supervision and community supervision. The academy also serves as a specialty training site for other law enforcement and selected emergency management agencies. The academy opened in 1984 on the grounds of the former Highland Rim School for Girls. A superintendent oversees the day-to-day operations of the academy.

During our investigation, we performed an analysis of the number of individuals who were employed by TDOC between January 2015 and October 2015. We learned that 1,083 people were hired or rehired, and 1,199 people terminated their employment or retired from correctional officer positions. Some individuals were hired, rehired, and terminated employment multiple times during this period.

INVESTIGATIVE RESULTS

FINDING 1 **THE TENNESSEE DEPARTMENT OF CORRECTION DID NOT COMPLY WITH ITS HIRING STANDARDS FOR A CORRECTIONAL OFFICER WHO DID NOT MEET THE VISION REQUIREMENTS**

The Tennessee Department of Correction (TDOC) did not comply with its hiring standards for a correctional officer who did not meet the vision requirements. Hiring standards govern the minimum qualifications individuals must meet to be employed as correctional officers and include both physical and mental attributes.

During the course of our investigation, we learned that TDOC hired an individual who did not meet the vision standards for a correctional officer and assigned this individual to duties that would require the ability to use a weapon. After we began making inquiries, TDOC reassigned the individual to duties that did not require use of a weapon. (We also noted the firearms policy allows unlimited retesting. Refer to Finding 5.)

This individual was initially hired and assigned to core security at a facility. The individual attended the academy, but was dismissed by TDOC's contracted on-site doctor for uncorrectable vision of 20/400 in one eye; therefore, the individual's employment was then terminated. A few months later, TDOC rehired the same individual who then completed training at the academy, with the exception of firearms training. The individual subsequently received firearms qualification from another TDOC facility. The individual was assigned to housing unit security and allowed to work armed posts. In April 2016, as a result of our inquiries, TDOC's central office informed the facility that the individual would no longer be allowed to work armed posts. The individual was reassigned to post duties that did not require the use of a weapon.

TDOC Policy 305.06, Employment Qualification Standards of Correctional Officers, section VI-A-2b, provides for pre-employment screening in which the examining medical professional determines if the candidate can perform required duties without creating hazards for themselves or others. The policy further lists several examples of duties, including:

... have vision in each eye correctable to 20/40 in order to perform thorough security inspections, searches of cells, housing units, corridors, program areas, and body searches of inmates and/or visitors for contraband items, and to provide general visual observation for security policy compliance.

At the time of the correctional officer's hiring, firing, and rehiring, Policy 305.06, section VI-A-3g, stated:

The results of the examinations are final and shall be grounds for separation from the employment process. Second opinions from representatives outside of the department or its contract designees shall not be permitted.

In addition to the policy noted above, the Tennessee Department of Correction, Employee Physical Examination document number CR-2240 section on vision states, "Visual Acuity – vision in each [eye] (correctable) to 20/40 or better. Loss of vision of any portion of visual fields in one eye will disqualify." TDOC policy does not explicitly provide an exception for an employee who does not meet the physical requirements and TDOC did not document this exception to the policy in writing in the employee's personnel file. As a result of our inquiries, TDOC staff provided to us in writing that the vision condition was considered a reasonable accommodation under the Americans with Disabilities Act as long as the employee passed all parts of training at the academy. TDOC had also been provided a letter of opinion from an outside doctor dated seven months prior to the correctional officer's initial employment. Relying on this letter violates Policy 305.06, section VI-A-3g.

The American Correctional Association, Standards for Correctional Training Academies, Section 1-CTA-1C-03-1 states:

Written policy, procedure, and practice provide a mechanism to process requests for reasonable accommodation to the known physical and/or mental impairments of a qualified individual with a disability, either an applicant or an employee. The accommodation need not be granted if it would impose an undue hardship or direct threat.

The manual defines direct threat as “a significant risk of substantial harm to the health or safety of any person, including the applicant or employee with a disability that cannot be eliminated or reduced by reasonable accommodation.” By this standard, TDOC should have had a process to evaluate requests for reasonable accommodation; however, without documentation in the employee’s personnel file, we were unable to determine if TDOC followed a process for granting reasonable accommodation.

Allowing an exception to the physical requirements of the position without documenting the reasons for the exception creates a precedent for TDOC to issue other exceptions for health-related matters without going through proper processes, which could pose a significant risk to correctional officers.

RECOMMENDATION

TDOC should adhere to its hiring standards and ensure candidates meet the minimum qualifications to safely and effectively perform their duties. Any exceptions to the standards based on the Americans with Disabilities Act should be documented in the employee’s personnel file.

MANAGEMENT’S RESPONSE—TONY PARKER, COMMISSIONER

The department concurs that policy does not currently provide for an exception to hiring practice; however, in this case, the department appropriately granted a reasonable accommodation to the employee in question as required under the Americans with Disabilities Act. The employee completed all required training and qualified with a firearm achieving a very high score. The department concurs that such accommodation was not appropriately documented in the employee’s personnel file. The personnel file has now been supplemented with information concerning the accommodation, and the department will review the applicable policy to determine whether revisions providing for limited exceptions are appropriate.

FINDING 2 THE TENNESSEE CORRECTION ACADEMY IS NOT IN COMPLIANCE WITH ITS TRAINING STANDARDS

The academy is not in compliance with its training standards. The Tennessee Department of Correction and the academy have standards that require certain minimum scores to pass various written exams and skills tests. Each student receives a form entitled the “Trainee Skills Overview Sheet.” This form documents the student’s skills test scores, written exam scores, firearms

qualification scores, and demerits received. A drill instructor signs off on the overview sheet. In reviewing these forms, we noted the following issues:

- A. Various inconsistencies on forms included: test papers reflected failing grades but scores were reported as passed; failing grades reported on tests but student allowed to complete the academy without a retest; no test paper in the file but passing grades reported; and scores recorded incorrectly that did not differentiate between pass and fail.
- B. Retests were not graded consistently. For example, three students had to take a retest; two of the students received the maximum passing score of 75 while a third student received a score of 80. A score of 80 exceeds the maximum allowable score on a retest.
- C. The academy was inconsistent in giving each class the same tests. For example, during our review period, some classes were not given a midterm or final exam while other classes were given those exams. According to the academy's course guide, a minimum score of 80 is required on the midterm to continue with the program, and a minimum score of 80 is required on the final exam to complete the program.
- D. We noted that on the electronic restraint devices test that was given on April 30, 2015, the score sheet reflected a grade of 100 for each student who took the test. However, the supporting test papers clearly reflected that not everyone scored a grade of 100, and some students' test papers indicated a failing score. We asked the instructor for an explanation, and he stated that after everyone took the initial test, the instructor went over the test and had certain people read off the questions, and the class would then provide answers until they got the question right. As a result, everyone technically made a grade of 100 on the retest. The instructor stated that he should have written the actual test scores on the score sheet, but instead he put a grade of 100 because everyone would have passed. He noted that this was not a class where students were being certified; instead, the test merely indicates they have completed training.
- E. We noted that final averages on some reports to facilities were incorrectly calculated. We noted that several students from one facility who attended the same class had incorrectly calculated final averages on their Trainee Skills Overview Sheet. We recalculated the averages for these students to determine if anyone inappropriately received an average grade of below 80. We noted one instance where a student had a reported average of 78.3 percent while his actual average was 84.9 percent. Incorrectly calculated averages could put the students at a disadvantage if the scores are used to determine raises and promotions.
- F. We noted that students were responsible for filling out the Trainee Skills Overview Sheets. We asked several instructors if the Trainee Skills Overview Sheets were checked for accuracy by the instructor signing off. The general consensus was that the Trainee Skills Overview Sheets were usually checked against the scores in the records office within a week or so of graduation, and any corrections would be noted. However, due to the number of inconsistencies noted above between the Trainee Skills Overview Sheets and the test scores, we question whether the Trainee Skills Overview Sheets are

actually being checked for accuracy. The Trainee Skills Overview Sheets are sent to the student's facility; however, according to the academy staff, these sheets are not used in determining post assignments.

RECOMMENDATION

The academy should ensure compliance with its training standards and that scores and averages are calculated correctly. Instructors should ensure that uniform procedures are followed for administering tests, and accurate test scores should be recorded on score sheets.

MANAGEMENT'S RESPONSE—TONY PARKER, COMMISSIONER

The department concurs. In the short term, this issue has been addressed with staff and will be a point of emphasis in training, and in future audits and reviews. In addition and specific to this issue, a new learning management system will be implemented at the academy in the first quarter of 2017, and across the state by midyear. The system will eliminate most of these current processes that are paper and labor intensive and inherently highly subject to human error.

FINDING 3 PERSONNEL AND TRAINING RECORDS FOR TRAINEES WHO ATTENDED THE TENNESSEE CORRECTION ACADEMY WERE HOUSED IN MULTIPLE LOCATIONS AND DID NOT CONTAIN COMPLETE INFORMATION

Personnel and training records for trainees who attended the academy were housed in multiple locations and did not contain complete information. During our review of trainee files, we could not determine whether some trainees met the minimum hiring and academic standards because the records to verify compliance could not be located. This resulted from TDOC's lack of a clear policy on what records should be maintained and where.

TDOC maintains three files for each trainee: a training file that contains information on in-service training, a confidential file that contains medical information, and a personnel file that contains all other information. The academy keeps records of the TDOC employees' training at the academy, including copies of tests, lists of grades, class rosters, and the results of skills tests. The academy also keeps some copies of medical files for the employees. TDOC maintains other records at various offices and institutional facilities.

We noted the following deficiencies that contributed to incomplete personnel and training records:

- A. TDOC maintains records at several different locations, including the academy, TDOC's central office, the regional probation and parole offices, the Tennessee Department of Human Resources (DOHR), and the institutional facilities. While we noted that three files were maintained for each employee, the contents of the files varied among locations. When we visited these locations to review files, personnel at the various locations seemed unsure about which records they had and where other records were located. In some instances, we would ask an individual about the location of a record and then be referred to one or more individuals, who would refer us back to the person with whom we started.

- B. According to TDOC personnel, when employees separate from service, their files are forwarded to DOHR for permanent storage. DOHR has a checklist of items that it maintains for separated employees. According to DOHR personnel, they scan the items from the checklist and return any medical or unnecessary documents. DOHR then shreds the copies of the scanned documents. TDOC does not maintain copies of the file before it is forwarded, nor does it send only the specific parts that DOHR needs. TDOC could not locate medical records that DOHR returned. As a result, we were unable to determine if some of the individuals who had separated from employment actually met minimum employment standards.

For the employees we reviewed, we found one complete file, eight files that were completed by substituting other documents, and 26 incomplete files. Without clear responsibility as to who should keep physical custody of employee records, we were unable to determine if the employees met minimum employment qualifications.

RECOMMENDATION

TDOC should establish and communicate clear guidelines to establish who has responsibility for the various employee records, and the academy and all facilities should comply with these guidelines.

MANAGEMENT'S RESPONSE—TONY PARKER, COMMISSIONER

The department concurs in part.

Policy 306.01 prescribes procedures related to the contents and maintenance of personnel files for employees in the Department of Correction. This includes information maintained as part of a confidential file. Policy 110.04 prescribes procedures related to employee training records. These files are maintained at the home institution or, for employees assigned to the Community Supervision Division, at Central Office.

Documentation demonstrating the employee met the minimum qualifications for hire are maintained in Section 3 of the personnel file and in the confidential file. Section 3 contains pre-employment documentation, which includes the employment application and educational credentials. Employee physical and psychological examination results are maintained in the confidential file.

When an employee separates, the personnel file is sent to the Department of Human Resources for archiving. The confidential file and training record are maintained by the home institution or, for employees in the Community Supervision Division, at Central Office. That confidential file is maintained at the local level per state rules. The confidential file would include results from the former employee's physical and psychological screening. The former employee's application and educational credentials would be maintained by the Department of Human Resources. The department points out that the content of the post-separation employee records maintained by the Department of Human Resources is defined by the Department of Human Resources.

In addition, Policy 110.04 further requires institutional training specialists to maintain an electronic copy of a separated employee's training file.

In light of the finding, the Department of Correction will review Policies 110.04 and 306.01 to determine areas of ambiguity and make the appropriate revisions to the policies.

FINDING 4 EVIDENCE OF INSTRUCTOR CERTIFICATION WAS NOT AVAILABLE FOR SOME INSTRUCTORS AT THE TENNESSEE CORRECTION ACADEMY

For the period under examination, we were unable to locate evidence of instructor certification for some of the instructors who taught classes at the academy. We were unable to locate evidence of certification for four of the 22 instructors who taught classes. These classes included the respectful workplace, CPR/First Aid, and Training the Trainer (T4T). Three of the instructors are no longer employed at the academy, and one is still employed. Two instructors left employment in 2015, and the third left employment in 2016. The information for these four instructors pertaining to the listed classes had been purged from the training certification records. Therefore, we were unable to determine if these instructors held the proper certifications.

The academy policy 301.04-1, Instructor Certification Requirements, requires that instructors hold basic qualifications for T4T, CPR/First Aid Instructor, and New Supervisor Training (NST). Specialized certifications are required for teaching chemical agents, electronic restraints, firearms qualification, and self-defense/use of force. A certification from the Tennessee DOHR is required for the respectful workplace, SMART performance planning, Competency and Behavior Based Interviewing (CABBI), and performance coaching.

RECOMMENDATION

The academy should ensure that evidence of instructor certification is available for current employees. In addition, the academy should maintain evidence of certification for former instructors for a period of time that corresponds to the TDOC's record retention policy, which is five years.

MANAGEMENT'S RESPONSE—TONY PARKER, COMMISSIONER

The department concurs.

The department has designated the training coordinators to receive all documentation related to completed training or certifications for all academy instructors. In addition, as previously mentioned in response to Finding 2, the department is implementing a statewide learning management system (LMS) to provide consistent electronic capture of instructor trainings and certifications.

As of October 2015, the training files of separated instructors, including certifications, are kept with the academy human resources staff for five years after separation. Only training summaries are sent to TDOC Central Office Human Resources for forwarding to the Department of Human Resources.

FINDING 5 **THE TENNESSEE CORRECTION ACADEMY'S CURRENT POLICY FOR FIREARMS QUALIFICATION ALLOWS UNLIMITED RETESTING**

The academy's current policy for firearms qualification guarantees a 100 percent pass rate. This policy requires a minimum acceptable score of 80 percent on the initial written examination to pass; however, the policy allows unlimited retesting until the exam is passed. Policy 506.09, Standard Firearms Qualification Training, Section VI-E, effective January 15, 2015, makes no mention of what will happen if the individual fails the retest, indicating the expectation that the individual will be remediated until he or she passes the retest. In fact, the policy specifically states that "the employee will be allowed to pre-test prior to an official re-test to demonstrate understanding and comprehension. This can occur as needed up to the point the instructor and employee feel competence has been obtained."

In summary, after failing the initial test, an individual is allowed to take an unlimited number of practice tests until he or she scores well enough to pass the actual retest, thus ensuring that the individual will eventually pass. Allowing an individual to take unlimited practice tests after failing the initial test seems to defeat the purpose of a written test because the individual is guaranteed to pass.

RECOMMENDATION

TDOC and the academy should consider the merits of the current no-fail firearms training policy.

MANAGEMENT'S RESPONSE—TONY PARKER, COMMISSIONER

The department does not concur.

The department recognizes that the current policy makes it likely that few, if any, employees fail the retest of the written firearms examination, but it also ensures that employees successfully master the material before qualification. Further, there is no assurance that all employees who attempt to pass the written portion of the qualification will actually do so. Current policy ensures that no employee is qualified without successfully passing the written examination and demonstrating understanding and comprehension.

The department did consider the merits of the policy when it adopted it. The department continues to believe that it is appropriate to attempt to remediate employees in an effort to have them master the material.

AUDITOR'S COMMENT

The purpose of an initial written testing policy is to determine if candidates have the aptitude to continue with firearms training. The existence of a testing and grading system seems pointless if students take unlimited practice tests until they can score well enough to pass a retest.

FINDING 6 **THE TENNESSEE DEPARTMENT OF CORRECTION DOES NOT MAINTAIN ADEQUATE CONTROLS OVER THE ISSUANCE OF FIREARM CERTIFICATION CARDS**

During our review of student files, we noted a sheet of blank annual firearm certification cards in one student's file. The sheet contained the student's card, a card for another student, and six additional cards with no names or signatures but with scores already filled in. Student files should only contain that student's card. Blank cards with scores already filled in are a potential liability, and cards could be issued to individuals who have not completed the certification training.

RECOMMENDATION

TDOC should implement and maintain controls over the issuance of firearm certification cards. An individual student's file should contain only information related to that particular student, not multiple students. Blank firearm certification cards should not reflect scores.

MANAGEMENT'S RESPONSE—TONY PARKER, COMMISSIONER

The department concurs.

The department will review the current qualification issuing process and provide refresher training to all firearm instructors and training coordinators on the process for documentation to be included in a student's file with special emphasis on firearms qualification cards. We will also ensure our compliance department and TCA mock audits check this process for documentation as well.
